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In re Application of  
GILES, Richard Courthope, et al.  
Application No.: 09/936,280  
PCT No.: PCT/AU00/00171  
Int. Filing Date: 10 March 2000  
Priority Date: 10 March 1999  
Attorney Docket No.: 2373/103  
For: TREE HARVESTING APPARATUS

DECISION ON

PETITION

UNDER 37 CFR 1.181

This decision is in response to "Renewed Petition Under 37 CFR 1.181," filed with the United States Patent and Trademark Office on 05 November 2003.

### BACKGROUND

On 10 March 2000, applicants filed international application PCT/AU00/00171. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 14 September 2000. On 28 September 2000, applicant filed a Demand for international preliminary examination, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty month period for paying the basic national fee in the United States expired on 10 September 2001.

On 10 September 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 30 October 2001, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905), indicating that a declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the oath or declaration were required.

On 13 August 2002, applicants submitted "Completion of Filing Requirements," indicating that applicants had not received a Notification of Missing Requirements accompanied by an executed declaration.

On 05 November 2002, applicants submitted a petition under 37 CFR 1.181, accompanied by a copy of the executed declaration.

On 13 March 2003, the Office mailed Notice of Acceptance (Form PCT/DO/EO/903) indicating that the application's 35 USC 371 dates were 13 August 2002.

On 05 September 2003, the Office mailed Decision On Petition Under 37 CFR 1.181, dismissing applicants' petition without prejudice and vacating the Notice of Acceptance mailed 13 March 2003.

On 05 November 2003, applicants filed the instant renewed petition.

### DISCUSSION

The showing required to establish nonreceipt of an Office communication is set forth in the notice entitled *Withdrawing the Holding of Abandonment When Office Actions Are Not Received*, 1156 O.G. 53 (Nov. 16, 1993). The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Item (1) was previously satisfied.

Items (2) and (3) have now been satisfied.

The supplementary declaration satisfies 37 CFR 1.497(a)-(b) and 37 CFR 1.63. The declaration submitted on 05 November 2002 was accompanied by a statement indicating it had been previously submitted on 13 August 2002, signed by someone registered to practice before the Office and a date stamped postcard receipt for 13 August 2002, identifying the application and listing a declaration. For the above reasons, the 05 November 2002 declaration is accepted as having been received on 13 August 2002.

### CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is GRANTED.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision, including the mailing of a Notification Of Acceptance (Form PCT/DO/EO/903) and filing receipt. The date under date under 35 U.S.C. §§371(c)(1), (c)(2) and (c)(4) date is 13 August 2002.



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